

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24<sup>th</sup> day of March, two thousand sixteen.

PRESENT:

JOHN M. WALKER, JR.,  
PETER W. HALL,  
DEBRA ANN LIVINGSTON,  
*Circuit Judges.*

JING WAN,  
*Petitioner,*

v.

LORETTA E. LYNCH, UNITED STATES  
ATTORNEY GENERAL,  
*Respondent.*

14-4218  
NAC

FOR PETITIONER: Gary J. Yerman, New York, New York.

FOR RESPONDENT: Benjamin C. Mizer, Principal Deputy  
Assistant Attorney General; John S.  
Hogan, Assistant Director; David H.  
Wetmore, Trial Attorney; Lisa M.

1                    Southerland, Law Clerk, Office of  
2                    Immigration Litigation, United  
3                    States Department of Justice,  
4                    Washington, D.C.

5            UPON DUE CONSIDERATION of this petition for review of a  
6    Board of Immigration Appeals ("BIA") decision, it is hereby  
7    ORDERED, ADJUDGED, AND DECREED that the petition for review is  
8    DENIED.

9            Petitioner Jing Wan, a native and citizen of the People's  
10   Republic of China, seeks review of an October 16, 2014, decision  
11   of the BIA affirming an April 22, 2013, decision of an  
12   Immigration Judge ("IJ") denying Wan's application for asylum,  
13   withholding of removal, and relief under the Convention Against  
14   Torture ("CAT").    *In re Jing Wan*, No. A 205 043 435 (B.I.A. Oct.  
15   16, 2014), *aff'g* No. A 205 043 435 (Immig. Ct. N.Y. City Apr.  
16   22, 2013).    We assume the parties' familiarity with the  
17   underlying facts and procedural history in this case.

18           Under the circumstances of this case, we have reviewed both  
19   the IJ's and the BIA's decisions, "for the sake of  
20   completeness."    *Wangchuck v. Dep't of Homeland Sec.*, 448 F.3d  
21   524, 528 (2d Cir. 2006).    The applicable standards of review

1 are well established. See 8 U.S.C. § 1252(b)(4)(B); *Yanqin*  
2 *Weng v. Holder*, 562 F.3d 510, 513 (2d Cir. 2009).

3 For asylum applications, like Wan's, governed by the REAL  
4 ID Act, the agency may, "[c]onsidering the totality of the  
5 circumstances," base a credibility finding on inconsistencies  
6 between the applicant's statements and other evidence, "without  
7 regard to whether" they go "to the heart of the applicant's  
8 claim." 8 U.S.C. § 1158(b)(1)(B)(iii); *Xiu Xia Lin v. Mukasey*,  
9 534 F.3d 162, 163-64 (2d Cir. 2008). "We defer . . . to an IJ's  
10 credibility determination unless, from the totality of the  
11 circumstances, it is plain that no reasonable fact-finder could  
12 make such an adverse credibility ruling." *Xiu Xia Lin*, 534 F.3d  
13 at 167.

14 The agency did not violate Wan's due process rights by  
15 relying on the notes from her asylum interview. Evidence may  
16 be admitted in immigration proceedings "if it is probative and  
17 its use is fundamentally fair." *Montero v. INS*, 124 F.3d 381,  
18 385-86 (2d Cir. 1997). "Fairness in this context 'is closely  
19 related to the reliability and trustworthiness of the  
20 evidence.'" *Id.* at 386 (quoting *Felzcerek v. INS*, 75 F.3d 112,  
21 115 (2d Cir. 1996)). Notes from an asylum interview do not

1 warrant the "special scrutiny" given to records of airport or  
2 credible fear interviews. *Diallo v. Gonzales*, 445 F.3d 624,  
3 632 (2d Cir. 2006). To rely on notes from an asylum interview,  
4 the IJ need only determine that the record "contain[s] a  
5 meaningful, clear, and reliable summary of the statements made  
6 by the applicant at the interview." *In re S-S-*, 21 I. & N. Dec.  
7 121, 124 (B.I.A. 1995); see also *Diallo*, 445 F.3d at 632-33  
8 (relying on the "useful guidance" in *Matter of S-S-*). As the  
9 IJ found, a monitor oversaw the translations, the notes were  
10 detailed, and there was no evidence of difficulty communicating  
11 with the interpreter. Given these considerations, the IJ did  
12 not violate Wan's due process rights in concluding that the  
13 notes bore sufficient indicia of reliability to be entitled to  
14 considerable weight. See *Diallo*, 445 F.3d at 632-33.  
15 Further, the Government was not required to introduce the notes  
16 in advance of the hearing, as they were impeachment evidence.  
17 See Imm. Ct. Pract. Man. Ch. 3.1(b)(ii)(A).

18 As the agency did not err in relying on the interview notes,  
19 substantial evidence supports the adverse credibility  
20 determination, which was based largely on inconsistencies  
21 between the asylum interview and Wan's testimony. Wan's asylum

1 claim was that she was forced to have an abortion after she  
2 became pregnant by a U.S. citizen, whom she met in China while  
3 she was working as a tour guide. Wan testified that she met  
4 Joseph Pereira while she was working as a tour guide, but at  
5 the asylum interview she claimed to have met him online before  
6 he came to China and that he came to China in order to meet her  
7 in person. She explained this inconsistency by denying that  
8 she had said this in the asylum interview and by stating that  
9 she did not recall the asylum interview clearly. These  
10 explanations do not compel a reasonable fact-finder to credit  
11 her testimony, given the degree of specificity of the asylum  
12 interview notes with respect to their meeting. *See Majidi v.*  
13 *Gonzales*, 430 F.3d 77, 80-81 (2d Cir. 2005).

14 Further, Wan testified inconsistently with her asylum  
15 interview regarding her relationship with Pereira after she  
16 discovered that she was pregnant. While she told the asylum  
17 officer that Pereira was very happy when he learned of her  
18 pregnancy, that they wanted to get married, and that they  
19 continued to communicate over the Internet after this  
20 conversation, she testified that his response to her pregnancy  
21 was simply to tell her to take care and that they ceased

1 communicating immediately afterward. Her explanation for this  
2 inconsistency was that she was only asked at the asylum  
3 interview whether she *could* have communicated with him, rather  
4 than whether she actually did. Once again, this explanation is  
5 unconvincing. See *id.*

6 Finally, the IJ did not err in finding that Wan's lack of  
7 reliable corroboration further undermined her credibility.  
8 See *Biao Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007).  
9 The IJ reasonably found that the letter from Wan's parents was  
10 inadequate to corroborate her testimony, because it merely  
11 mentioned the date of the abortion with no further details. *Xiu*  
12 *Xia Lin*, 534 F.3d at 166 n.3; *Y.C. v. Holder*, 741 F.3d 324, 334  
13 (2d Cir. 2013). While the BIA mischaracterized the IJ's  
14 decision as finding that Wan could have introduced medical  
15 documentation, this error is harmless: because the lack of  
16 corroboration was used to bolster the credibility finding  
17 rather than as an independent ground for denying relief, the  
18 IJ was not required to specify evidence that Wan could have  
19 introduced. *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d  
20 315, 341 (2d Cir. 2006).

1       For the foregoing reasons, the petition for review is  
2 DENIED. As we have completed our review, any stay of removal  
3 that the Court previously granted in this petition is VACATED,  
4 and any pending motion for a stay of removal in this petition  
5 is DISMISSED as moot. Any pending request for oral argument  
6 in this petition is DENIED in accordance with Federal Rule of  
7 Appellate Procedure 34(a)(2), and Second Circuit Local Rule  
8 34.1(b).

9                               FOR THE COURT:  
10                              Catherine O'Hagan Wolfe, Clerk